

## EXHIBIT “A”

ROBERT E. KREBS, CA BAR NO. 057526  
rkrebs@thelenreid.com  
ROBERT E. CAMORS, JR., CA BAR NO. 121204  
bobcamors@thelenreid.com  
RICHARD A. LEASIA, CA BAR NO. 73397  
rleasia@thelenreid.com  
THELEN REID & PRIEST LLP  
225 West Santa Clara Street, Suite 1200  
San Jose, CA 95113-1723  
Telephone: (408) 292-5800  
Facsimile: (408) 287-8040

Attorneys for Plaintiff and Counterclaim Defendant  
GENMARK AUTOMATION, INC.,

PAUL J. ANDRE, CA BAR NO. 196585  
(pandre@perkinscoie.com)  
LISA KOBIALKA, CA BAR NO. 191404  
(lkobialka@perkinscoie.com)  
PERKINS COIE LLP  
101 Jefferson Drive  
Menlo Park, CA 94025  
Telephone: (650) 838-4300  
Facsimile: (650) 838-4350

Attorneys for Defendant and Counterclaimant  
INNOVATIVE ROBOTICS SYSTEMS, INC.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GENMARK AUTOMATION, INC., a  
California corporation,

Plaintiff-Counterdefendant,

vs.

INNOVATIVE ROBOTICS SYSTEMS,  
INC., a California corporation,

Defendant-Counterclaimant.

Case No.: 05-CV-04707 PJH

**STIPULATED PROTECTIVE ORDER**

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1           1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
7 all disclosures or responses to discovery and that the protection it affords extends only to the  
8 limited information or items that are entitled under the applicable legal principles to treatment as  
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
10 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil  
11 Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will  
12 be applied when a party seeks permission from the court to file material under seal.

13           2.     DEFINITIONS

14           2.1     Party: Any party to this action, including all of its officers, directors,  
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16           2.2     Disclosure or Discovery Material: All items or information, regardless of  
17 the medium or manner generated, stored, or maintained (including, among other things, testimony,  
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
19 discovery in this matter.

20           2.3     "Confidential" Information or Items: Information (regardless of how  
21 generated, stored or maintained) or tangible things that qualify for protection under standards  
22 developed under F.R.Civ.P. 26(c) and information described in Paragraph 5.1.

23           2.4     "Highly Confidential - Attorneys' Eyes Only" Information or Items:  
24 Extremely sensitive "Confidential Information or Items" whose disclosure to another Party or  
25 non-party would create a substantial risk of serious injury that could not be avoided by less  
26 restrictive means and information described in Paragraph 5.1.  
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1                   2.5     Receiving Party: A Party that receives Disclosure or Discovery Material  
2 from a Producing Party.

3                   2.6     Producing Party: A Party or non-party that produces Disclosure or  
4 Discovery Material in this action.

5                   2.7     Designating Party: A Party or non-party that designates information or  
6 items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
7 Confidential - Attorneys' Eyes Only."

8                   2.8     Protected Material: Any Disclosure or Discovery Material that is  
9 designated as "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

10                  2.9     Outside Counsel: Attorneys who are not employees of a Party but who are  
11 retained to represent or advise a Party in this action.

12                  2.10    House Counsel: Attorneys who are employees of a Party.

13                  2.11    Counsel (without qualifier): Outside Counsel and House Counsel (as well  
14 as their support staffs).

15                  2.12    Expert: Person with specialized knowledge or experience in a matter  
16 pertinent to the litigation who has been retained by a Party or its in-house or Outside counsel to  
17 serve as an expert witness or as a consultant in this action and who is not a past or a current  
18 employee of a Party or of a competitor of a Party's and who, at the time of retention, is not  
19 anticipated to become an employee of a Party or a competitor of a Party's. This definition  
20 includes a professional jury or trial consultant retained in connection with this litigation.

21                  2.13    Professional Vendors: Persons or entities that provide litigation support  
22 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
23 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
24 subcontractors.

### 25                  3.     SCOPE

26                  The protections conferred by this Stipulation and Order cover not only Protected Material  
27 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
28

1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
 2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed by this  
 5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
 6 otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each

9 Party or non-party that designates information or items for protection under this Order must take  
 10 care to limit any such designation to specific material that qualifies under the appropriate  
 11 standards. A party or third party may designate as "Confidential" any material that the party  
 12 reasonably believes to constitute or include proprietary business or financial information, personal  
 13 information or information furnished to it in confidence by an third-party, which information is  
 14 not known or freely accessible to the general public. Information or materials designated as  
 15 "Confidential" may be disclosed to the parties for the purposes of the litigation - pursuant to  
 16 Paragraph 7.2, but must be protected against disclosure to third parties. Absent a specific order by  
 17 this Court, once designated as "Confidential", such designated information shall be used solely in  
 18 connection with this litigation, and not for any business, competitive, governmental, or other  
 19 purpose or function, and such information shall not be disclosed to anyone except as provided  
 20 herein.

21 A party or third party may designate as "Highly Confidential – Attorneys' Eyes  
 22 Only" any material that the party reasonably and in good faith believes the disclosure of which  
 23 would result in the disclosure of trade secrets or other highly sensitive research, development,  
 24 production, personnel, commercial, or business information (including but not limited to  
 25 proprietary information, contracts, bids, corporate planning documents, strategic planning  
 26 documents, documents that reveal market or customer analyses, competitive strategy, research and  
 27 development documents, financial statements, and other financial or budgetary documents).  
 28 Information or materials designated as "Highly Confidential - Attorneys' Eyes Only" shall be

1 those things of a proprietary business, financial, or technical nature that might be of value to a  
 2 competitor or potential customer of the party or nonparty holding the proprietary rights thereto,  
 3 and that must be protected from disclosure. Absent a specific order by this Court, once designated  
 4 as "Highly Confidential - Attorneys' Eyes Only," such designated information shall be used solely  
 5 in connection with this litigation, and not for any business, competitive, or governmental purpose  
 6 or function, and such information shall not be disclosed to anyone except as provided herein.

7 If it comes to a Party's or a non-party's attention that information or items that it  
 8 designated for protection do not qualify for protection at all, or do not qualify for the level of  
 9 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
 10 withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
 12 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
 13 material that qualifies for protection under this Order must be clearly so designated before the  
 14 material is disclosed or produced.

15 A Party or non-party that makes original documents or materials available for  
 16 inspection need not designate them for protection until after the inspecting Party has indicated  
 17 which material it would like copied and produced. During the inspection and before the  
 18 designation, all of the material made available for inspection shall be deemed "HIGHLY  
 19 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
 20 documents it wants copied and produced, the Producing Party must determine which documents,  
 21 or portions thereof, qualify for protection under this Order, then, before producing the specified  
 22 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or  
 23 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY") on each page that contains  
 24 Protected Material.

25 The designation of information or material as "Confidential" or "Highly  
 26 Confidential - Attorneys' Eyes Only" for purposes of this Protective Order shall be made in the  
 27 following manner by the Party or nonparty seeking protection:  
 28

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), by affixing the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as appropriate, to at least the first page of any document containing any confidential information or material.

(b) for testimony given in deposition or in other pretrial or trial proceedings, (i) by a statement on the record, by counsel, during such deposition or other pretrial or trial proceeding that the entire transcript or a portion thereof shall be designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only," as appropriate, hereunder; or (ii) by written notice of such designation sent by counsel to all parties within fifteen (15) calendar days after the mailing (via overnight mail) to counsel of the transcript of the deposition. The parties shall treat all deposition and other pretrial and trial testimony as "Highly Confidential - Attorneys' Eyes Only" hereunder until the expiration of fifteen (15) calendar days after the mailing (via overnight mail) to counsel of the transcript of the deposition. Unless so designated, any confidentiality is waived after the expiration of the 15-day period unless otherwise stipulated or ordered. The parties may modify this procedure for any particular deposition or proceeding through agreement on the record at such deposition or proceeding or otherwise by written stipulation, without further order of the Court. If any document or information designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" is used during the course of a deposition, that portion of the deposition record reflecting such confidential information shall be sealed and stamped with the designated degree of confidentiality, and access thereto shall be limited pursuant to the other terms of this Protective Order.

(c) for information produced in some form other than documentary, and for any other tangible items, by affixing in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

5.3 Inadvertent Failures to Designate. If timely corrected upon discovery, an inadvertent failure to designate qualified information or items as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right



1 to secure protection under this Order for such material. If material is appropriately designated as  
 2 “Confidential” or “Highly Confidential - Attorneys’ Eyes Only” after the material was initially  
 3 produced, the Receiving Party, on timely notification of the designation, must make reasonable  
 4 efforts to assure that the material is treated in accordance with the provisions of this Order.

5         6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

6               6.1     Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
 7 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
 8 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
 9 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
 10 promptly after the original designation is disclosed.

11              6.2     Meet and Confer. A Party that elects to initiate a challenge to a Designating  
 12 Party’s confidentiality designation must do so in good faith and must begin the process by  
 13 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
 14 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
 15 for its belief that the confidentiality designation was not proper and must give the Designating  
 16 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no  
 17 change in designation is offered, to explain the basis for the chosen designation. A challenging  
 18 Party may proceed to the next stage of the challenge process only if it has engaged in this meet  
 19 and confer process first.

20              6.3     Judicial Intervention. A Party that elects to press a challenge to a  
 21 confidentiality designation after considering the justification offered by the Designating Party may  
 22 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
 23 applicable) that identifies the challenged material and sets forth in detail the basis for the  
 24 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
 25 the movant has complied with the meet and confer requirements imposed in the preceding  
 26 paragraph and that sets forth with specificity the justification for the confidentiality designation  
 27 that was given by the Designating Party in the meet and confer dialogue.

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1 The burden of persuasion in any such challenge proceeding shall be on the  
 2 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
 3 material in question the level of protection to which it is entitled under the Producing Party's  
 4 designation.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
 7 disclosed or produced by another Party or by a non-party in connection with this case only for  
 8 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
 9 disclosed only to the categories of persons and under the conditions described in this Order. When  
 10 the litigation has been terminated, a Receiving Party must comply with the provisions of  
 11 section 11, below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a  
 13 location and in a secure manner that ensures that access is limited to the persons authorized under  
 14 this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
 16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 17 disclose any information or item designated CONFIDENTIAL, only to:

18 (a) the Receiving Party's Outside Counsel of record in this action, as  
 19 well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the  
 20 information for this litigation and who have signed the "Agreement to Be Bound by Protective  
 21 Order" that is attached hereto as Exhibit A;

22 (b) the Receiving Party's in-house Counsel and one designated  
 23 employee of the Receiving Party who has been disclosed to the Producing Party, and to whom  
 24 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
 25 Bound by Protective Order" (Exhibit A);

26 (c) experts (as defined in this Order) of the Receiving Party to whom  
 27 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
 28 Bound by Protective Order" (Exhibit A) and who follow the procedures set forth in Paragraph 7.4;

1 (d) the Court and its personnel;  
 2 (e) court reporters, their staffs, and professional vendors to whom  
 3 disclosure is reasonably necessary for this litigation; and  
 4 (f) the author of the document or the original source of the information  
 5 or to the person to whom the document was originally addressed.

6 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES  
 7 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by  
 8 the Designating Party, a Receiving Party may disclose any information or item designated  
 9 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

10 (a) the Receiving Party's Outside Counsel of record in this action, as  
 11 well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the  
 12 information for this litigation;

13 (b) Experts (as defined in this Order) (1) to whom disclosure is  
 14 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by  
 15 Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4,  
 16 below, have been followed;

17 (c) the Court and its personnel;

18 (d) court reporters, their staffs, and professional vendors to whom  
 19 disclosure is reasonably necessary for this litigation; and

20 (e) the author of the document or the original source of the information,  
 21 or to the person to whom the document was originally addressed.

22 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL -  
 23 ATTORNEYS' EYES ONLY" Information or Items to "Experts". Unless otherwise ordered by  
 24 the court or agreed in writing by the Designating Party, a Party that seeks to disclose to an  
 25 "Expert" (as defined in this Order) any information or item that has been designated "HIGHLY  
 26 CONFIDENTIAL - ATTORNEYS' EYES ONLY" first must make a written request to the  
 27 Designating Party that (1) attaches a signed copy of "Agreement to Be Bound by Protective  
 28 Order" (Exhibit A), (2) sets forth the full name of the Expert and the city and state of his or her

1 primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's  
2 current employer(s), (5) identifies each person or entity from whom the Expert has received  
3 compensation for work in his or her areas of expertise or to whom the expert has provided  
4 professional services at any time during the preceding five years, and (6) identifies (by name and  
5 number of the case, filing date, and location of court) any litigation in connection with which the  
6 Expert has provided any professional services during the preceding five years.

7 (a) A Party that makes a request and provides the information specified  
8 in the preceding paragraph may disclose the subject Protected Material to the identified Expert  
9 unless, within seven (7) business days of delivering the request, the Party receives a written  
10 objection from the Designating Party. Any such objection must set forth in detail the grounds on  
11 which it is based.

12 (b) A Party that receives a timely written objection must meet and  
13 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the  
14 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the  
15 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local  
16 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must  
17 describe the circumstances with specificity, set forth in detail the reasons for which the disclosure  
18 to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and  
19 suggest any additional means that might be used to reduce that risk. In addition, any such motion  
20 must be accompanied by a competent declaration in which the movant describes the parties'  
21 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
22 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve  
23 the disclosure.

24 In any such proceeding the Party opposing disclosure to the Expert shall  
25 bear the burden of proving that the risk of harm that the disclosure would entail (under the  
26 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to  
27 its Expert.

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1           8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 2                 OTHER LITIGATION.

3           If a Receiving Party is served with a subpoena or an order issued in other litigation that  
 4 would compel disclosure of any information or items designated in this action as  
 5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the  
 6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
 7 and in no event more than three court days after receiving the subpoena or order. Such  
 8 notification must include a copy of the subpoena or court order.

9           The Receiving Party also must immediately inform in writing the Party who caused the  
 10 subpoena or order to issue in the other litigation that some or all the material covered by the  
 11 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
 12 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
 13 caused the subpoena or order to issue.

14           The purpose of imposing these duties is to alert the interested parties to the existence of  
 15 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
 16 protect its confidentiality interests in the court from which the subpoena or order issued. The  
 17 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
 18 confidential material - and nothing in these provisions should be construed as authorizing or  
 19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20           9.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 22 Material to any person or in any circumstance not authorized under this Stipulated Protective  
 23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
 24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
 25 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
 26 this Order, and (d) request such person or persons to execute the “Acknowledgment and  
 27 Agreement to Be Bound” that is attached hereto as Exhibit A.  
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1           10.     FILING PROTECTED MATERIAL

2           Without written permission from the Designating Party or a court order secured after  
3 appropriate notice to all interested persons, a Party may not file in the public record in this action  
4 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
5 with Civil Local Rule 79-5.

6           11.     INADVERTENT DISCLOSURE

7           The inadvertent disclosure of privileged or work product information does not, standing  
8 alone, waive the designating party's privilege or work product protections. Upon discovery of  
9 inadvertently disclosed privileged or work product information, the designating party shall inform  
10 the receiving party of its recent discovery and request the return of such information. The  
11 receiving party shall then return or destroy all copies, abstracts, summaries, excerpts, compilations  
12 or other form of reproduction or capturing of such information to the designating party upon its  
13 request.

14          12.     FINAL DISPOSITION

15          Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
16 after the final termination of this action, each Receiving Party must return all Protected Material to  
17 the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
18 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
19 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
20 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
21 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
22 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
23 deadline that identifies (by category, where appropriate) all the Protected Material that was  
24 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
25 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected  
26 Material. Notwithstanding this provision, Outside Counsel are entitled to retain an archival copy  
27 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work  
28 product, even if such materials contain Protected Material. Any such archival copies that contain

1 or constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
2 (DURATION), above.

3 13. MISCELLANEOUS

4 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
5 person to seek its modification by the Court in the future.

6 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
7 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
8 producing any information or item on any ground not addressed in this Stipulated Protective  
9 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
10 the material covered by this Protective Order.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: June 7, 2006

THELEN, REID & PRIEST, LLP

3  
4  
5 By: /s/  
6 ROBERT E. CAMORS, JR.  
Attorneys for Genmark Automation, Inc.

7 Dated: June 7, 2006

PERKINS COIE LLP

8  
9  
10 By: /s/  
11 PAUL J. ANDRE  
12 LISA KOBIALKA  
13 JAMES L. HAUGEN  
Attorneys for Innovative Robotics Systems, Inc.

14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15 DATED: 6/13/06

16 Honorable  
17 United States





EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
 understand the Stipulated Protective Order that was issued by the United States District Court for  
 the Northern District of California on \_\_\_\_\_ [date] in the case of *Genmark*  
*Automation, Inc. vs. Innovative Robotics Systems, Inc.*, N.D. Cal. 05-CV-04707 PJH. I agree to  
 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number] as my  
 California agent for service of process in connection with this action or any proceedings related to  
 enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]